

FEDERAL CIRCUIT COURT OF AUSTRALIA

NANRE v MINISTER FOR IMMIGRATION & ANOR

[2015] FCCA 134

Catchwords:

MIGRATION – Review of Migration Review Tribunal decision – refusal of a skilled visa – applicant allegedly supplied false information about his employment for the purposes of obtaining a skills assessment from Trade Recognition Australia – TRA not approved for skills assessment for the purposes of the visa criteria at relevant time – whether TRA skills assessment can be relied upon as bogus document – Public Interest Criterion 4020 - claim of apprehended bias based on similar decisions – no jurisdictional error.

Cases cited:

Singh v Minister for Immigration & Anor [2012] FMCA 145

Young, re Macryannis [2011] FCA 1272

Kennon & Spry (2008) 251 ALR 257

Brar v Minister for Immigration and Citizenship [2012] FMCA 519

Batra v Minister for Immigration and Citizenship [2012] FMCA 544

Bajwa v Minister for Immigration & Anor [2014] FCCA 2890

Sekhon v Minister for Immigration & Anor [2014] FCCA 2834

Mudiyanselage v Minister for Immigration and Citizenship [2013] FCA 266

Applicant: SUKHJINDER PAL SINGH NANRE

First Respondent: MINISTER FOR IMMIGRATION &
BORDER PROTECTION

Second Respondent: MIGRATION REVIEW TRIBUNAL

File Number: SYG 2375 of 2012

Judgment of: Judge Demack

Hearing date: 28 October 2013

Date of Last Submission: 28 October 2013

Delivered at: Brisbane

Delivered on: 22 January 2015

REPRESENTATION

Counsel for the Applicant: Mr Steele

Solicitors for the Applicant: Milner Lawyers

Counsel for the First
Respondent: Mr Smith

Solicitors for the First
Respondent: Sparke Helmore Lawyers

ORDERS

- (1) That the First Respondent's name be changed to Minister of Immigration and Border Protection.
- (2) That the Further Amended Application filed 9 September 2013 be dismissed.
- (3) That the Applicant pay the First Respondent's costs of an incidental to these proceedings fixed in the sum of six thousand, eight hundred and twenty five dollars (\$6,825).

**FEDERAL CIRCUIT COURT
OF AUSTRALIA**

AT BRISBANE

SYG 2375 of 2012

SUKHJINDER PAL SINGH NANRE

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

MIGRATION REVIEW TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

1. By a further amended application filed on 9 September 2013 the applicant seeks judicial review of a decision of the Migration Review Tribunal dated 21 September 2012. The Tribunal affirmed the decision of a delegate of the first respondent not to grant the applicant a skilled (provisional) (Class VC) visa.
2. The applicant claims two grounds in which it is asserted the Tribunal fell into jurisdiction error. The first is said to arise from a failure of the Tribunal to properly consider the consequences of the fact that Trades Recognition Australia was not a validly approved assessing authority at the time the applicant made his application. The second asserts an apprehension of bias, essentially because of the considerable similarity of the decisions of the Tribunal with two other matters heard the same day.

3. For the reasons that follow, I do not think that these criticisms are made out and it follows that the application will be dismissed.

The Materials in the Court Book

4. The applicant's general skilled migration application form is at CB1 to 11. CB1, the applicant answered a question under the heading Skills Assessment, "Have you applied to a relevant assessing authority for an assessment of your skills for your nominated skilled occupation?" The answer to this was "yes".
5. At CB9 the applicant gave details of his skills assessment as it was clear he was required to do. He nominated his occupation as cook. He nominated the name of the assessing authority as Trades Recognition Australia. He nominated the date of skills assessment as 11 June 2009. He quoted a reference/receipt number BQ0352829.
6. At CB19 to 25 the applicant forwarded material from the Maharaja Indian Restaurant in support of his application which, in part, confirmed that he had accumulated at least 936 hours of work experience and that he cooked many of the dishes listed in the restaurant's menu (CB19). Full details of the work allegedly performed by the applicant are set out over the CB pages up to CB25.
7. At CB 48 to 49 a letter from Trades Recognition Australia dated 22 July 2009 is set out. This confirms that the applicant had been successful in his application for a visa as a cook.
8. On 10 January 2012, an officer of the first respondent wrote to the applicant. The letter is at CB75 to 80. The letter relevantly advised the applicant that for the category of visa he was seeking he needed to satisfy the requirements of Public Interest Criterion (PIC) 4020. A copy of PIC4020 was annexed to the letter and is at CB80.
9. The letter importantly asserted at CB76:

You have advised that the following applicants are included in your application for a Class VC subclass 485 Skilled Provisional Graduate Visa:

Main applicant: Sukhjinder Pal Singh Nanre.

DoB: 2/11/1986.

It has been brought to the Department's attention that Sukhjinder Pal Singh Nanre may not satisfy PIC 4020 on the basis of the following information being submitted to the Department:

An investigation was conducted by the Department in February 2011 into Maharaja Indian Restaurant where you stated that you completed your work experience. The Employer was unable to verify your identity and confirmed that he did not provide you with a work reference letter.

Please be advised that PIC 4020 requires that there is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Migration Review Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in relation to:

- The application for the visa; or*
- A visa that the applicant held in the period of 12 months before the application was made.*

As evidence has been found in your application that suggests a bogus document or information that is false or misleading in a material particular has been submitted, you are strongly encouraged to carefully read the following information to further understand how this matter can be addressed with the Department.

10. The applicant's agent responded at CB91 and following. The information provided included a statutory declaration from the applicant, CB117 to 118, asserting that he had indeed worked at the Maharaja Indian Restaurant and seeking to explain why it might have been that his former employer had not recognised his photograph.
11. At CB119 to 120 there was a statutory declaration from the owner, Baljit Singh Binning, also confirming that the applicant had worked more than 900 hours for him. Put shortly, Mr Binning said that he was distracted when interviewed by departmental officers because at the time he was in the process of purchasing another food business and he further pointed out that a number of employees whose photographs he was shown had worked for him more than two years ago. He also said that the cooks generally worked with the main cook who was his wife.

12. The Decision Record of the delegate is at CB125 to 129. The decision relied strongly upon the information provided by departmental officers who had visited the Maharaja Indian Restaurant. Put shortly, the delegate preferred the evidence as given by Mr Binning to the departmental officers in February 2011, to the explanations that the applicant had subsequently provided through his agent.

13. The record of the site visit conducted by departmental officers is at CB147 to 160. At CB147 the following is recorded:

Mr Binning was very cooperative and explained that he had around 5 or 6 students working for him, doing 900 hours of work experience. This was contrary to the number of applicants DIAC had on file as having worked there. I showed Mr Binning a number of photographs of clients who were claiming work experience from his restaurant and asked if he recognised any of them. Mr Binning marked the photos yes or knew if he knew them and they had done work experience at his restaurant. He then signed and dated the bottom of each page of photos. I asked Mr Binning if it was possible students had worked there that he didn't know about, Mr Binning said this was not possible as he and his wife are there every day.

14. I note that at CB148 Mr Binning confirmed that students mainly washed dishes, cleaned the kitchen and helped the chopping of vegetables/meat and that some might have cooked rice but that his wife was the only person who cooked at the restaurant. "Mr Binning was very definite about this."

15. The report continued at CB148:

We asked Mr Binning if he had prepared the work references that we had. Mr Binning said that he didn't write him as he doesn't write in English but the students brought them to him and he just signed them. It was apparent that Mr Binning had difficulty in reading English as he asked me to read a couple of the names to him from the photos we had provided. Mr Binning also mentioned that one of the students who had worked for him had stolen one of his stamps with the business details on it and also stole the ABN.

16. The authors of the report noted that from the work references provided to the department, "it would have meant that at any given time there could have been as many 25 employees in the restaurant. Mr Binning

was adamant that even when the business was better last year, he had only 3-4 staff working on any given night, and this included himself and his wife.”

17. The departmental officers recorded at CB149:

On the basis of information provided by Mr Binning I am satisfied that the work references provided to DIAC for the following clients are misleading as they indicate that students were working as Cooks to a trade standard. The work references also specifically state as follows:

“... For examples of the types of dishes prepared and cooked from start to finish by [redacted] please refer to the attached menu...”

18. The report went on to list a number of applicants who were non-genuine and the applicant in this case was one of them.

19. The applicant provided a written submission from his agent dated 12 July 2012 which runs from CB167 to 198. It appears to have been at the hearing held on 13 July 2012. This responded to the decision of the delegate and dealt in some detail with the matter of the TRA assessment and the report from the February 2011 visit. I note that at CB169, the submissions expressly asserted that the applicant had a successful skills assessment and asserted:

The Application for the Applicant’s skills assessment was made to the TRA on 11 June 2009. The Application contained, amongst other documents, the Applicant’s transcripts and completion letters from Holmes as well as the work experience letter provided by Maharaja Indian Restaurant dated February 2009.

...

We submit that the Applicant had a valid skills assessment result from TRA which indicates that the TRA were satisfied with his stated work experience and qualifications and that the Applicant met the assessment requirements for a cook.

20. The Tribunal wrote to the applicant by a letter dated 25 July 2012, CB204 to 206. The letter referred to the site visit in February 2011 and at CB205 recorded:

In addition at previous hearings of other claimed employees, the employer owner and his wife confirmed there are no records of

the hours worked. Further the tribunal also had doubts about the employer and his wife's credibility as they had difficulty remembering who worked at the restaurant, providing different names each time and when and how many staff were employed each night and inconsistent evidence about record keeping. Specifically the owner's wife said they kept a log book of pieces of paper but her husband kept records, whereas the owner said they did not keep a record and other employees said there was no record kept of hours worked or sign on.

Further, other claimed employees who had an application before the Tribunal did not name you as a fellow worker.

In addition work references provided by other employees were almost identical over more than 3 page work reference. Some employees also stated the references were copied from others. Another employee said the reference was a pro forma reference on the computer which was copied. The owner said one reference was done by the lawyer. In one hearing, the owner's wife was not aware of the references at all but at a later hearing she said she had talked to the applicants and owner about the reference, but the applicant's prepared the references.

21. The Tribunal went on to point out these matters might lead the Tribunal not to accept that the owner made a mistake in failing to identify the applicant and sought his comments.
22. The agent's reply dated 22 August 2012 is at CB208 and enclosed statutory declarations by the applicant, Mrs Binning, and Harpreet Singh. These statutory declarations speak for themselves and it is not necessary to traverse them further because they are dealt with in the Tribunal's decision. There were of course consistent with the applicant's position. I note that Harpreet Singh (CB213) deposed that he had worked in the restaurant and that the owner could not recognise his photograph which led to the cancellation of his visa.

The Tribunal's Decision

23. The Tribunal set out the application and relevant law at CB225 to 226. Subject to the express matters raised in the further amended application, nothing of any moment emerges from that recitation.

24. At CB227 to 228 the Tribunal paraphrased the Claims and Evidence. The Tribunal noted at paragraph 19 of CB227 that the applicant had provided a work reference letter stating that he had worked at least 936 hours at the Maharaja Indian Restaurant as a cook.
25. The Tribunal noted the delegate's decision and the site visit report, which had led to the invitation to the applicant to comment and the materials provided in reply. At CB228 to 233 the Tribunal paraphrased the matters that had arisen at the two hearings that it had held. The Tribunal noted that at paragraph 28, CB228, that it had outlined its concerns that the applicant's TRA assessment might be based on false and misleading statements either because he did not work at the restaurant as claimed or that if he did, his duties were not those of a cook or as described.
26. The Tribunal recorded the applicant's replies which were essentially to the effect that he had indeed worked as a cook and that his reference, while first drafted by him, was indeed properly signed by the owner. The Tribunal noted at paragraph 34 that the reference provided by the applicant was the same as another person's reference and expressed its doubts. The Tribunal put adverse information pursuant to section 359AA to the applicant (paragraph 35, CB229).
27. The Tribunal took evidence from Mr Binning which is recorded at paragraphs 38 to 46 and recorded Mrs Binning's evidence at 231 to 232. The Tribunal noted the post-hearing submission dated 22 August 2012 (referred to above).
28. The Tribunal conducted a second hearing recorded at CB233. This was concerned solely with the question as to whether the applicant would, even if he had provided a bogus document, be entitled to a visa owing to the compelling circumstances that affect the interests of Australia or compassionate and compelling circumstances that affect the interests of an Australian citizen, permanent resident etc (see paragraph 68, CB233).
29. The applicant expressly asserted there were no such circumstances (paragraph 70, CB233).
30. At paragraph 71 the Tribunal recorded:

The Tribunal put adverse information that would be reason or part of the reason for affirming the decision under review and informed he could seek additional time to respond. The Tribunal reiterated its concerns that the information from the owner and his wife was vague and inconsistent at hearings, in DIAC visit about the number of staff that worked, that the owner signed only 5 or 6 references and had already identified 5 people at the DIAC visit, and was definite about the volunteers not cooking other than rice and chopping. The information is relevant because it shows the owner and his wife have given inconsistent evidence which might lead the tribunal to doubt their credibility. It also suggests that the applicant did not work for more than 900 hours in duties directly as a cook. As a result the tribunal may reasonably suspect the TRA assessment is a document that was obtained because of a false or misleading statement, being the work reference that the applicant worked for 900 hours directly as a cook. The Tribunal may find the applicant provided a bogus document and not satisfy PIC 4020 and affirm the decision under the review.

The applicant said they should not suffer if the owner's information did match theirs. It is his wife who they worked with all the time. He completed the 900 hours in the kitchen and can prove his skills.

31. The Tribunal's findings and reasons are at CB234 to 237. The Tribunal identified the relevant issue as being whether the applicant met PIC 4020. The Tribunal found at paragraph 76, CB234:

TRA had been provided with a work experience letter dated 26 February 2009 in relation to the applicant from Maharaja Indian restaurant for the purpose of the obtaining the skills assessment. The DIAC file shows the TRA assessment and a copy of that work reference was provided to DIAC (Immigration). The work reference was also provided to the tribunal. The tribunal finds the applicant provided work experience reference letter dated 26 February 2009 from the owner of Maharaja Indian restaurant to TRA, Immigration and the tribunal. The Tribunal finds the applicant provided TRA assessment to DIAC.

32. In respect of the evidence from Mr Binning, the Tribunal said (paragraph 77, CB234):

At an interview with DIAC in February 2011 the owner/employer of the restaurant said the applicant had not worked for him at all and that his wife was the cook and other volunteer students

helped with the cleaning and cutting. However, in February 2012 the owner provided a statutory declaration that he had made a mistake and after the applicant had approached him he and his wife recognised him and agreed the applicant had worked there as a volunteer cook. While the owner gave evidence at the hearing and at the hearings of other review applicants, the Tribunal had some serious concerns about the owner's credibility as his evidence was vague about who worked there, when, the hours and duties and he could not remember and no records were kept. The Tribunal does not accept that the owner's vague and inconsistent evidence and inability to recall the applicant or others is explained because he did not spend much time in the kitchen. The owner is the employer; worked in the restaurant every day, and the applicant claimed to have worked regularly for over a year in the restaurant, the owner was aware that his stamp had been stolen which he had reported to DIAC and the tribunal does not accept that in these circumstances the owner would not identify or recall the applicant at the DIAC interview or later, when he came to correct the DIAC interview information would be able to provide a consistent coherent information about the applicant and his duties. Given the alleged association as employer/employee for more than a year and more than 900 hours it is reasonable to expect that the owner and his wife would have knowledge of the applicant and be able to provide consistent evidence about hours and duties and other employees. Further, at the DIAC interview the owner said that it is not possible that he would not know students who worked there as he worked there every day. In addition, the tribunal had serious concerns about the credibility of the owner's wife's evidence also as it was vague, inconsistent regarding whether records were kept and she could not remember. As a result the tribunal places little weight on the 2012 statutory declaration of the owner and his evidence and the owner's wife's evidence and the 2012 statutory declaration about whether the applicant worked there as a cook performing cook duties as listed for 936 hours.

33. The Tribunal then traversed the evidence about the work experience letter and concluded, on a basis that seems to be well open to it, that it was a pro forma document copied by many including the applicant which did not accurately recall what duties, if any, the applicant performed. The Tribunal found that the duties "which the applicant claimed to perform in the work reference were exaggerated and embellished and were not an accurate record of the duties he performed, if any". The Tribunal's finding at paragraph 79 fully

supports this conclusion. The Tribunal went on to find that it did not accept that the applicant had worked 936 hours as claimed owing to a lack of records and roundly disbelieved Mr Binning and his wife as to the explanations they gave about the keeping or non-keeping of records. Indeed, the Tribunal had serious doubts whether the applicant had worked at the restaurant as a volunteer cook as claimed at all. At paragraph 81, CB235 to 6, the Tribunal recorded:

The tribunal does not accept the owner's 2012 statutory declaration that he made a mistake at the 2011 DIAC interview and the applicant did work for him. The owner and his wife gave vague, inconsistent evidence and were not able to remember who worked there or when they worked, the hours of work. Also in other hearings, the applicant was not named as one of the employees. Further, the owner did not keep any records of who worked at the restaurant or the hours that they worked. While the owner claimed he made a mistake in 2011 and could now identify the applicant in 2012, this was after the applicant had come to him after receiving the natural justice letter. The Tribunal has considered the owner's and applicant's explanation that the owner was not in the kitchen as much and he was preoccupied with Dominos Restaurant purchase and there were many photos. The tribunal does not accept this explanation, as the owner would have been aware of the seriousness of the situation in 2011 particularly given he had reported that his restaurant stamp had been stolen (and even more so again in 2012 at the hearing). Also the DIAC interview with him was quite detailed and the owner stated and identified that he had only had 5 or 6 volunteer students and the applicant was not one of them. The tribunal has also considered the applicant's post hearing statement but does not accept that the owner was confused or forgetful. The owner has had a number of opportunities to provide his evidence orally and in writing and was aware of the issues and yet at hearing his evidence was inconsistent and vague. The tribunal does not accept that the owner was not often there, as this is inconsistent with his statement to DIAC that he was there every day and would know the students who worked for him.

34. The Tribunal went on to consider the post-hearing evidence of the owner's wife and Harpreet Singh, but for reasons which I find cogent, have failed to consider them as having any weight.

35. At paragraph 85 the Tribunal concluded:

Given the owner's initial statements to DIAC that the applicant was not identified as working at the restaurant and that his wife did the cooking, the little weight the tribunal attaches to the subsequent statutory declaration, the lack of corroborative evidence that the applicant worked at the restaurant from other employees and the lack of records of any hours worked and the applicant's claims that he sometimes worked as a waiter and washing dishes the tribunal finds there is evidence that the work reference is a misleading statement. The tribunal finds the work reference was a misleading statement because the tribunal does not accept the applicant worked at the restaurant, or that he worked at the restaurant for at least 936 hours in the cook duties as listed.

When considered together the Tribunal finds and reasonably suspects the TRA assessment is a document that was obtained because of a false or misleading statement, whether or not made knowingly, being a work reference in which it was stated the applicant worked as a cook for at least 936 hours at the Maharaja restaurant and listed his cook duties and experience. The Tribunal finds therefore it is a bogus document as defined in s 97 of the Act.

36. The Tribunal went on to conclude, as was inevitable in the circumstances, that the applicant did not meet PIC 4020. Relevantly for these purposes that is what led to the refusal of the application.

Ground 1: The Tribunal erred in law in finding that the applicant did not meet the Public Interest Criterion (PIC) 4020 of the regulations and thus did not satisfy clause 485.224 of the regulations.

37. I will not set out the particulars seriatim as they go to some length.
38. The written submissions of the applicant put the matters simply and straightforwardly at paragraph 3 on page 5 where they assert:

Ground one of the applicant's grounds of application focuses on whether the TRA was a valid assessing authority. The applicant says that the TRA was not a valid assessing authority at the time that the work experience letter was provided to it, and that for that reason, the work experience letter given to the TRA by the applicant (even if that document was false) was not given "in relation to" the application for the Visa.

39. It is submitted that the relevant instrument (IMMI 11/68) did not come into force until 1 October 2011 and therefore could not have applied to the assessment of the applicant in this case.
40. The written submissions go on to refer to the case of *Singh v Minister for Immigration & Anor* (2012) FMCA 145 to which I shall return. In accordance with that and other decisions, it was submitted that it was clear that TRA was not a valid assessment authority at the time the applicant applied in this case.
41. Authority was referred to as what the meaning of “in relation to” means including *Young, re Macryannis* [2011] FCA 1272 where Stone J said at 24:

While the phrase, in relation to, is a phrase of wide import the authorities recognise that the closeness of the relationship required by the expression “must be ascertained by reference to the nature and purpose of the provision in question and the context in which it appears”.

42. Reference was also made to *Kennon & Spry* (2008) 251 ALR 257 where Kiefel J said at paragraph 217 on page 315:

The expression “in relation to” is of wide and general import and should not be read down in the absence of some compelling reasons for doing so. As Toohey and Gummow JJ said in PMT Partners, the words are prima facie broad and designed to catch things which have a sufficient nexus to the subject. The question of nexus is dependent upon statutory context.

43. The submission goes on to state at paragraphs 11 and 12:

In the present case, even if the work experience letter was false (which is denied), and even if that means that the TRA assessment is a “bogus document”, that document (ie, the TRA assessment) had no relevance to the task the Minister or his delegate needed to perform in considering whether to grant the visa to the applicant.

That is, because the TRA was not a valid assessing authority, any document provided by it to the Minister (or to the Tribunal) is entirely irrelevant to the criteria which the applicant is obliged to satisfy to obtain the Visa. For that reason, irrespective of whether the TRA assessment was in fact a bogus document, any such

document was not supplied by the applicant “in relation to” his application.

44. The first respondent’s submissions may be paraphrased fairly shortly. At paragraph 17, it was submitted that the ground of review was misconceived and were in direct conflict with the decisions in *Brar v Minister for Immigration and Citizenship* [2012] FMCA 519 at [72] and *Batra v Minister for Immigration and Citizenship* [2012] FMCA 544 at [51]-[58]. Reference was made to the judgment of Judge Riley in *Batra* at [50]-[51] in these terms:

Even though the TRA have no power to make a skills assessment, and the purported skills assessment did not have any effect as a skills assessment, it remained a bogus document within the meaning of the [Migration] Act.

It is immaterial whether or not the skills assessment was an administrative decision, or whether or not the TRA was purportedly delegated to perform a function, or whether the skills assessment was no assessment at all. The TRA skills assessment had a physical reality as a document obtained because of false or misleading information. As such, it was a bogus document.

45. The short submissions advanced by counsel of behalf of the applicant do not take the matter very much further. At page 5 of the transcript, line 6 counsel submitted:

Now, what the applicant says is for a document to be provided in relation to the application for the visa, which is what 4020 requires, there has to be at least some relevant causal connection or a nexus between the document and the application. It can’t be a document which is provided irrelevantly.

That’s what this document was. The TRA assessment, albeit it that the Minister appears to have considered that the document was required, albeit that the applicant considered that the document was required, it was not in fact required to be provided. And if hadn’t been provided, it could not have affected the applicant’s application for a visa. So to that extent, the document was not provided, could not have been provided, in relation to the application.

46. Counsel for the Minister, not surprisingly, submitted that the phrase “in relation to” was broad enough to operate upon these circumstances.

47. A consideration of the authorities may helpfully, in my view, begin with the decision of Federal Magistrate Driver (as his Honour then was) in *Singh v Minister for Immigration & Anor* [2012] FMCA 145. That decision, when looked at carefully, turned on the particular facts before it and involved consideration as to whether or not TRA had any relevant function bearing in mind that it had not been approved as an assessing authority at the relevant time. His Honour found that because this was the case there was, at the time of the Tribunal's decision, no information provided that was false or misleading in a material particular in relation to his visa application.
48. In a more recent decision given on 11 December 2014, that of *Bajwa v Minister for Immigration & Anor* [2014] FCCA 2890, Judge Purdon-Sully said at 39 and following:

Whilst an applicant referred the court to the decision of Driver FM (as he then was) in Singh v Minister for Immigration & Anor (2012) FMCA 145, in particular at 65, it is not proper to follow that particular decision in light of the authorities.

Further in a subsequent decision in the same matter (Singh v Minister for Immigration and Citizenship (2013) FMCA 243) Driver FM accepted at 10, 11 and 12 that the Tribunal was entitled to have regard to the fact that Mr Singh had submitted a bogus document, being his first skills assessment and that whether the TRA was validly appointed or not it still met the definition of bogus document regardless of whether the TRA was authorised to make the assessment.

49. *Bajwa* involved one of the two other persons whose cases were heard by the Tribunal in this case on the same day. Her Honour came to the conclusion that:

Accordingly, the fact that the TRA is not a relevant assessing authority at a particular time does not change the nature of the document if it is found to be bogus.

50. In the second decision involving applicants who had been heard on the same day as Mr Nanre, namely *Sekhon v Minister for Immigration & Anor* [2014] FCCA 2834, Cameron J accepted at 9 that TRA was not a validly specified relevant assessing authority at the time of the applicant's application. That application turned on slightly different findings that at 32 his Honour stated:

The finding that the TRA skills assessment was a bogus document was one open to the Tribunal notwithstanding that that assessment was not a valid assessment for the purposes of clause 485.214 or clause 485.221. That the assessment was of no legal effect for its specific purposes was immaterial to whether or not it was a bogus document: Batra at 95 (60). Public Interest Criteria in 4020 is concerned with why an impugned document, or information has been provided to the entities to which it refers, not with the purpose to which such material might be put ...

Although it could have been drawn more clearly, it is apparent that PIC 4020 is concerned with honesty in the application process, rather than with the legal efficacy of documents which may be based on a bogus document or on false or misleading information.

51. Finally, in the case of *Mudiyanselage v Minister for Immigration and Citizenship* [2013] FCA 266, Tracey J dealt with another TRA case involving PIC 4020. It is apparent from his Honour's decision at 26 that at the time TRA made the assessments in that case it had not been appointed as a relevant assessing authority. That case did not turn on the particular phrase with which are here concerned, ie, "in relation to". It was concerned with the phrase "in a material particular".

52. At paragraph 31, his Honour states:

The construction contended for the appellant strains the language of PIC4020. That contended for by the Minister does not: it flows from the ordinary and natural meaning of the text. PIC4020 is engaged if an applicant gives to a relevant entity either a bogus document or information that is false or misleading in a material particular when applying for a visa. The mere submission of a bogus document as defined in s 97 of the Act is sufficient to attract the operation of PIC4020(1) regardless of the contents of such a document.

53. His Honour continued at 35:

i) One of the stated purposes of the amendment was, then, to frustrate applicants who submit bogus documents when making a visa application in the hope that they will not be detected but that, if their deceit is exposed, they are able to eschew reliance on the document without prejudice to the success of their application.

54. In this case it is clear to my mind that the phrase “in relation to” does not bear the restricted meaning that the applicant seeks to give it. The fact is that the bogus assessment (and I do not accept challenges to the Tribunal’s finding that it was a bogus document) was submitted as part of the visa application. It was plainly in relation to the visa application even though the application was deficient in the sense that TRA was not the relevant appointed assessing authority at the time.
55. It follows that this ground is not made out.

Ground 2: Failure to consider individual circumstances of applicant

56. The decision of the second respondent was affected by jurisdictional error because the second respondent in affirming the decision of the first respondent’s delegate made on 26 March 2012, did not take into account or properly consider the individual’s circumstances of the applicant giving rise to an apprehension of bias.
57. The kernel of this ground of the application is to the effect that the Tribunal simply cut and pasted its decision and did not in fact turn its mind properly to the applicant’s particular circumstances. Emphasis is put upon an incorrect date of the work experience letter, in fact citing that of Mr Bajwa. The second matter relied on is the Tribunal incorrectly cited 12 July 2012 as the date of the work experience letter when it was in fact the date of the submissions of the applicant’s advisor.
58. I have been provided with copies of the decisions of the Tribunal in all three matters.
59. As earlier mentioned, I have also had copies of the two decisions of Purdon-Sully J and Cameron J in relation to the two cases. I have been careful not to pay too much regard to what they say as I wish to make certain that I bring my own mind independently to the assessment of this ground of appeal.
60. The point advanced by the applicant’s written submissions is essentially made in paragraph 14 on page 8, as follows:

The applicant’s amended ground of review contends that the second respondent failed to properly consider the particular

circumstances of the applicant's case, thereby constructively failing to exercise jurisdiction and demonstrating apprehended bias. A reading of the Tribunal's reasons for decision in this matter, together with the reasons for the decision in relation to the matters of Sekhon (SYG 2453 of 2012) and Bajwa (SYG 2323 of 2012), all of which were decided by the same member, demonstrates that the Tribunal failed to pay proper attention to the facts and circumstances of this particular matter. The decisions are very similar and use extremely similar phrasing.

61. The written submissions then go on to refer to the two errors as to date.
62. The written submissions of the first respondent point to the fact (paragraph 24) that:

Although the Tribunal may have made mistakes in the recording of certain dates, it is evident from the Tribunal's reasons that it considered this applicant's circumstances and that he was provided with an opportunity to give evidence and present arguments at the hearing. Further, where the Tribunal deals with applications that have similar factual aspects, the use of similar language and form of expression represents consistency in decision-making and not apprehended bias: AZABR v Minister for Immigration & Anor [2011] FMCA 825 [46] to [52].

63. Reference was made to the judgment of Judge Lindsay in that case at [50] where his Honour said:

[g]iven these remarkably similar aspects of their claims, it is unsurprisingly that there was a consistency in outcome and that in explaining how it reached that particular outcome, similar language and thought processes were evident.

64. In my opinion, it is not necessary to recite the law in relation to the test for apprehended bias. It is not, in my view, in circumstances of this case controversial and is dealt with in the parties' written submissions in necessarily similar terms. It is a matter of looking at the decisions and forming a judgment when reading the decision fairly and as a whole as to whether or not the Tribunal turned its mind properly to the matters before it.
65. To begin with I should say that I have compared the references in the Bajwa and Sekhon matters with that of the applicant. The other two have been provided to the court and are on the file.

66. The reference provided by Mr Bajwa is, as far as I can see, identical (apart from its date and the name of the applicant) with that of the applicant. They appear to be word for word the same with the exception obviously of the dates they worked and the exact number of hours.
67. Mr Sekhon's reference is slightly different but many of the sections of it (for example the work done in respect of entrees and vegetarians dishes) and the tools and equipment used are identical and otherwise the reference bears a number of similarities to that of Mr Bajwa and of Mr Nanre.
68. All three of the decisions are relevantly identical from paragraphs 1 to 26 so far as I can see. The same form of words, the same headings, the same paragraphs are replicated.
69. The matters recorded under the heading The Tribunal Hearing are all different and reflect slight differences in what took place. The different way in which the matters are recorded suggests that the Tribunal was dealing with each matter on its own terms.
70. There is a striking similarity in the Tribunal's recording of the s 359AA procedure that it adopted, but given that the evidence of Mr Binning given to DIAC was the same in each instance and given that there are some minor differences in the way the s 359AA material is recorded, once again there appears to be a measure of differentiation.
71. While the format by which the Tribunal recorded the hearings, the post-hearing submissions and the second hearings necessarily bears some considerable similarity, this to my mind is not surprising given that the three cases arose out of deficiencies in the applicants' cases that were themselves almost identical.
72. While some of the findings and reasons adopted similar if not identical phraseology, particularly in relation to Mr Sekhon and Mr Nanre, there are differences in some of the ways in which the findings that are expressed that to my mind suggest that when read fairly and as a whole, the Tribunal turned its mind to a consideration of the particular circumstances of each of the three individuals notwithstanding the similarities in their cases.

73. In a case where one of the matters in issue was the copying from the template of the TRA assessment reference letters by the applicants, it is perhaps unfortunate that the Tribunal clearly developed something of a template in these matters. The marked similarity of language used really permits of no other conclusion. The Tribunal must have prepared one of these three judgments first and then used that judgment, at least in part, to construct the others.
74. Given that the Tribunal was considering three matters heard on the same day it is far more probable than otherwise that the Tribunal worked on the three of them at the same time and in error transposed the date of the work experience letter in error.
75. So far as the second alleged error is concerned, namely that at paragraph 27 of the Tribunal's Decision Record of 21 September 2012, when it was asserted that the 12 July 2012 date was that for the work reference when in fact it was in 26 February 2009, that was clearly an error caused by the fact, as counsel submitted, the applicant's agent sent a copy of the same to the Tribunal.
76. Looking at the Tribunal's decision fairly and as a whole I do not think that a reasonable and informed observer being appropriately conversant with the circumstances of the case would form the view that the Tribunal did not bring a fair and impartial mind to the making of the decision.
77. It follows that this ground must fail.

Conclusion

78. For the above reasons neither ground of the further amended application is made out and the application will be dismissed with costs.

I certify that the preceding seventy-eight (78) paragraphs are a true copy of the reasons for judgment of Judge Demack

Date: 22 January 2015